

REMARKS

Claims 1-32 are currently pending in the application. In an Office Action dated April 18, 2005 ("Office Action"), the Examiner rejected claim 1 under 35 U.S.C. § 102(e) as being anticipated by Stasiak, U.S. Patent Application Publication No. 2003/0230746 A1 ("Stasiak"), and rejected claims 1-32 under 35 U.S.C. § 102(e) as being anticipated by Krieger et al., U.S. Patent Application Publication No. 2004/0159835 A1 ("Krieger"). Applicants' representative respectfully traverses the 35 U.S.C. § 102(e) rejections of claims 1-32.

With regard to the rejection of claim 1 by Stasiak, 35 U.S.C. § 102(e) explicitly designates as prior art a published patent application filed in the United States before the invention by the Applicant for the patent potentially anticipated by the published patent application. Applicants' representative previously supplied a Rule 131 Affidavit in which Applicants attested to an invention date of no later than July 30, 2002. The date "July 30, 2002" was an unfortunate oversight. Applicants' representative therefore is submitting a newly drafted Rule 131 Affidavit in which Applicants attested to an invention date of no later than June 14, 2002. The Rule 131 Affidavit is supported by a number of documents containing research-result and documents prepared for meetings, all dated, with dates starting from March 2002. The submitted evidence clearly shows results from testing the claimed electrical device, and not simply chemical compounds or methods for synthesis of polymers. Applicants' representative respectfully submits that, in view of the newly drafted Rule 131 Affidavit and large number of documents offered in support of the Affidavit, that Stasiak is clearly not citable against the current application under 35 U.S.C. § 102(e).

With regard to the Examiner's comments regarding Applicants' representatives previous remarks concerning Krieger, Applicants' representative confesses to being somewhat perplexed. The Examiner states that "applicant cited various paragraphs of the Parent PCT which discussed or do not discuss functional zones between electrodes, however the Parent PCT is in Russian and translated portions of such alleged paragraphs have not been provided." In the previous response, Applicants' representative stated:

With regard to Krieger, Applicants' representative respectfully observes that the publication date for Krieger is August 19, 2004, more than one year after filing of the current application. Therefore, like Stasiak, Krieger is not available as a prior-art reference under 35 U.S.C. § 102(e). However, Krieger is a continuation-

in-part application of Krieger, et al., PCT/RU01/00334, filed on August 13, 2001 ("Krieger Parent"). The Krieger Parent was published as US Patent Application Publication No. 2004/0246768 A1 ("Parent Publication"). Only information disclosed in the Krieger Parent, or Parent Publication, may cited against the current application. Applicants' representative includes copies of both the Russian-language version of the Krieger Parent, as well as the Parent Publication.

In other words, U.S. Patent Application Publication No. 2004/0246768 A1 is a word-for-word English language translation of the Russian PCT. Applicants' representative fluently reads Russian, and has compared the two documents, and they are the same. Krieger has a filing date (February 11, 2004) and a publication date (August 19, 2004) that are both much later than the filing date of the current application (June 26, 2003), and Krieger is not therefore available as prior art. An English-language version of the parent application, US Patent Application Publication No. 2004/0246768 A1, is available for citation by the Examiner, and the Examiner's citations need to refer to US Patent Application Publication No. 2004/0246768 A1, not to Krieger.

The Examiner states, in the Office Action, that "it is difficult to determine which paragraphs are being referred to in the Parent PCT because page and line numbers are used for identification instead of the paragraph [0001] format." Again, Applicants' representative, in the above quoted portion from the previous response, clearly stated that the Russian PCT had been published as US Patent Application Publication No. 2004/0246768 A1, and defined the phrase "Parent Publication" to refer to US Patent Application Publication No. 2004/0246768 A1. In the remarks concerning Krieger in the previous response, Applicants' representative specifically referred to the Parent Publication, or US Patent Application Publication No. 2004/0246768 A1, as the English-language translation of the Russian PCT. For example:

First, it should be noted that the Krieger Parent discusses only a memory cell, and not memory elements of larger, two-dimensional or three-dimensional arrays of memory elements. The Krieger Parent application discusses the disclosed memory cell as consisting of two electrodes with a functional zone between them (**Parent Publication, [0017]**). There is, however, no discussion of signal lines in the Krieger Parent, i.e. conductive components of a larger, multi-memory-element device. (emphasis added)

Both Krieger and the Parent Publication, or US Patent Application Publication No.

2004/0246768 A1, use the "the paragraph [0001] format." Applicants' representative respectfully requests that the Examiner re-read the original remarks concerning Krieger in light of this clarification. As Applicants' representative stated in the previous response, and as is still quite true, "[t]he majority of the disclosed information in Krieger is new matter. ... Most of the Examiner's arguments in support of the 35 U.S.C. § 102(e) rejection of claims 1-32 by Krieger cite the figures of Krieger and paragraphs of Krieger that either include new matter or that are entirely new matter."

Finally, the Examiner states ".. however the Parent PCT is in Russian and translated portions of such alleged paragraphs have not been provided." As discussed above, a full English-language translation of the Russian PCT was and is available to the Examiner as US Patent Application Publication No. 2004/0246768 A1. If the Examiner chooses to cite a reference filed more than 6 months after the filing date of the current application, then the Examiner should undertake the effort to determine what material in the reference was included in the document from which the cited published application claims priority. If that effort involves obtaining a translation of the document from which the published application claims priority, then it is the Examiner's burden to obtain that translation. Translation services are available to the Examiner (*see* MPEP § 901.05(d)). Happily, in the present case, no translation was or is needed. Should the Examiner wish to continue to cite the family of patents that includes Krieger, then Applicants' representative respectfully requests the Examiner to cite US Patent Application Publication No. 2004/0246768 A1.

In Applicants' representative's opinion, all of the claims remaining in the application are now clearly allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,

Warren B. Jackson et al.

OLYMPIC PATENT WORKS PLLC

A handwritten signature in cursive script, reading "Robert W. Bergstrom", is written over a horizontal line.

Robert W. Bergstrom
Registration No. 39,906

Enclosures:

Postcards (2)
1.131 Declaration
Statement of Facts
Transmittal in duplicate

Olympic Patent Works ^{PLLC}
P.O. Box 4277
Seattle, WA 98194-0277
206.621.1933 telephone
206.621.5302 fax